

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated January 28, 2009, (hereinafter Office Action) have been considered but are believed to be improper. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

With respect to the objection to the Specification and the § 101 rejection of Claim 15, the claim has been amended to be directed to a computer program product as described in the Specification at page 2, lines 8-15 and page 5, lines 4-11. It is noted that the subject matter of a claim need not be described literally in the Specification (*i.e.*, using the same terms or *in haec verba*) and an applicant is not limited to the nomenclature used in the application as filed. MPEP §§ 608.01(o) and 2163.01. However, Claim 15 is now explicitly supported by the Specification, and the claimed product would not correspond to an intangible carrier wave. Since the claimed computer process instructions are encoded such that they are structurally and functionally interrelated to the claimed tangible product, Applicant submits that Claim 15 is directed to statutory subject matter and accordingly requests that the rejection be withdrawn.

Applicant respectfully traverses the § 102(b) rejection based upon the teachings of U.S. Patent No. 6,075,531 to DeStefano (hereinafter “DeStefano”) because DeStefano does not teach or suggest each of the claimed limitations. Specifically, Applicant maintains that DeStefano does not teach determining a grip area on a predetermined location on the display, as claimed in each of the independent claims. The cited portion of DeStefano at column fifteen merely teaches that a location may be predetermined for a “preview” mode in order to see which windows would be affected if a grip mode is subsequently selected. The preview location is not a predetermined grip area as claimed. Rather, in DeStefano the location of the pointer determines the origin of the proximity range, and the location of the pointer is spontaneously determined by a user. For example, the claimed grip area is a predetermined area on a display; whereas, DeStefano teaches that after the “preview” the user must still select a grip mode in order to perform a desired operation. DeStefano’s predetermined “preview” mode location fails to correspond to the claimed determination of

a grip area on a predetermined location on the display. Without correspondence to each of the claim limitations, the § 102(b) rejection would be improper.

In order to anticipate a claim, the asserted reference must teach every element of the claim. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Federal Circuit also recently held that “Because the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” (*Net Moneyin, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 2008 WL 4614511 (Fed. Cir. 2008) quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)). Therefore, all claim elements, and their limitations, must be found in the prior art reference to maintain the rejection based on 35 U.S.C. § 102. Applicant respectfully submits that DeStefano does not teach every element of independent Claims 1, 8, 15, and 16 in the requisite detail, and therefore fails to anticipate Claims 1-16.

Moreover, in an effort to facilitate prosecution and without acquiescing to characterizations of the asserted art, Applicant’s claimed subject matter, or to the applications of the asserted art or combinations thereof to Applicant’s claimed subject matter, Applicant has amended independent Claims 1, 8, 15, and 16 to further characterize how activation of the grip area is detected. Support for these changes may be found in the Specification, for example, at page 4, lines 28-30; therefore, the changes do not introduce new matter. Since DeStefano teaches that a grip mode is selected after the affected windows are selected, thereby requiring additional button selection from the user, DeStefano fails to teach detecting activation of the grip area on the basis of a cursor being at least in the vicinity of the grip area. Thus, the pending claims are further believed to be patentable over the teachings of DeStefano.

Dependent Claims 2-7 and 9-14 depend from independent Claims 1 and 8, respectively, and also stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by DeStefano. While Applicant does not acquiesce with the particular rejections to these

dependent claims, these rejections are also improper for the reasons discussed above in connection with independent Claims 1 and 8. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited reference. Therefore, the rejection of dependent Claims 2-7 and 9-14 is improper, and Applicant requests that the rejection be withdrawn.

With particular respect to the rejection of dependent Claim 2, Applicant further traverses because the asserted teachings do not correspond to the claimed showing of the grip area on the display. In contrast, the asserted Fig. 11 illustrates the initiation of the move pointer mode. While search span 252 and grip span 254 are illustrated with dashed circles, these merely indicate how to find affected windows, and the dashed circles are not actually visible on the display. Instead of showing a grip area, as claimed, DeStefano teaches that the pointer representation is changed and that affected windows may be highlighted (Col. 13, lines 34-37). Without correspondence to each of the claimed limitations, the § 102(b) rejection is improper, and Applicant accordingly requests that the rejection be withdrawn.

With particular respect to the rejection of dependent Claims 3 and 4, Applicant further traverses because the asserted teachings do not correspond to the claimed determining of the grip area at the edges (or at a bar) of an application window. While the cited portions at column nine teach that the origin of the proximity range may be set to a position on the closest window, the “closest window” is the window closest to the pointer. DeStefano’s pointer always determines the origin of the proximity range. Thus, a window closest to DeStefano’s pointer is inconsistent with, and fails to correspond to, the claimed determination on a predetermined location on the display (Claim 1) at the edges (or at a bar) of an application window (Claims 3 and 4). Since the location of DeStefano’s pointer is determined spontaneously by a user, DeStefano’s grip area is not determined on a predetermined location on a display. The changing location of DeStefano’s pointer changes which window is “closest to” the pointer and the location of such window on the display changes such that it would not be predetermined. Without correspondence to each of the

claimed limitations, the § 102(b) rejection is improper, and Applicant accordingly requests that the rejection be withdrawn.

With particular respect to the rejection of dependent Claim 7, Applicant further traverses because the asserted teachings do not correspond to the claimed detection of a change in the location of a grip area. As discussed above, DeStefano detects the location of a pointer and not necessarily a grip area. Without correspondence to each of the claimed limitations, the § 102(b) rejection is improper, and Applicant accordingly requests that the rejection be withdrawn.

Authorization is given to charge Deposit Account No. 50-3581 (KOL.222.WUS) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,
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Date: March 27, 2009

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